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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,401	12/28/2001	William E. Nordt III	1440 A (NORDT)	1202

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EXAMINER

KAVANAUGH, JOHN T

ART UNIT

PAPER NUMBER

3728

DATE MAILED: 04/08/2003 3

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/034,401

Applicant(s)

NORDT, WILLIAM E. *CW*

Examiner

Ted Kavanaugh

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3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \*   c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 24 and 34. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "26,28,30,32" has been used to designate two different elements, e.g. 28 has been designated as the "relieve area" and the "fulcrum". A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
3. The drawings are objected to because the plane upon which a sectional view is taken should be indicated on the general view by a broken line, the ends of which should be designated by numerals corresponding to the figure number of the sectional view and have arrows applied to indicate the direction in which the view is taken, see CFR 1.84(h)(3). Line B—B should be 3—3, as described in the specification. Although, figure 1 also doesn't show B—B. Moreover, figure 3 doesn't appear to be an accurate cross-section of figure 1 since figure 3 shows the orthotic (10) inside a sole layer and figure 1 doesn't show it in any sole. A proposed drawing correction or

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corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the interdigitated portion (fingers) that are attached or formed in the lower surface (claims 3 and 5) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

5. The disclosure is objected to because of the following informalities: the applicant failed to number the pages.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

6. Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, the phrase "of a material that resist deformation" appears to be inaccurate and indefinite. The orthotic device (10) actually flexes and doesn't deform. In claim 1, the phrase "a depressable or interdigitated portion" is unclear and indefinite. It is not clear if applicant is claiming a depressable portion or a interdigitated portion.

Moreover, the dependent claims such as claim 5 further limit the "interdigitated portions" but it is not clear if they have been previously claimed or not because of the use of the term "or". In claim 3, the phrase "a relieved area cut, attached, **or** otherwise formed" is similarly indefinite. In claim 4, the phrase "is cut or otherwise formed" is similarly indefinite. In claim 4, the phrase "depression or deviation" is similarly indefinite. In claim 5, the phrase "relieved areas cut or otherwise formed in said lower surface" is similarly indefinite. In claim 8, the phrase "wherein said distal end projects below said lower surface" is unclear and indefinite. The distal ends of the prongs are actually part of the orthotic device and have a lower surface so how can they project below itself?

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1,3,4,5,6,7,8,9 as understood are rejected under 35 U.S.C. 102(b) as being anticipated by US 3999558 (Barnwell et al).

Barnwell teaches an orthopedic shoe plate having structure substantially as claimed including resilient prongs/fingers (8) and a fulcrum (4). The shoe plate is inherently capable of performing the functions as claimed.

9. Claims 1-5,8 as understood are rejected under 35 U.S.C. 102(b) as being anticipated by US 5311680 (Comparetto).

Comparetto teaches an orthopedic shoe plate having structure substantially as claimed including resilient prongs/fingers in the metatarsalphalangeal area and in the heel area (see figure 4). The shoe plate is inherently capable of performing the functions as claimed.

10. Claims 1-5,8,9 as understood are rejected under 35 U.S.C. 102(b) as being anticipated by US 1496994 (Mirizio).

Mirizio teaches an arch support having structure substantially as claimed including resilient prongs/fingers (12,13) in the metatarsalphalangeal area and in the heel area (see figure 2). The arch support is inherently capable of performing the functions as claimed.

### ***Conclusion***

**Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111. Moreover, "The prompt development of a clear issue requires that the replies of the applicant meet the objections to and rejections of the claims. Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06" MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.**

11. Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, "should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

In order to avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Center at (703) 872-9302 and After Finals to (703) 872-9303 (**FORMAL FAXES ONLY**). If the previous Fax numbers are not working use any of the following numbers (703) 305-3579 or (703) 305-3580 or

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(703) 305-3590. Applicants who authorize charges to a PTO deposit account may also use it for filing papers that require a fee. Please identify Examiner Ted Kavanaugh of Art Unit 3728 at the top of your cover sheet.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers or other general questions should be directed to Tech Center 3700 Customer Service at (703) 306-5648, email CustomerService3700@uspto.gov .

Any inquiry concerning the MERITS of this examination from the examiner should be directed to Ted Kavanaugh whose telephone number is (703) 308-1244. The examiner can normally be reached on 6AM - 4PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached at (703) 308-2672.

Other helpful telephone numbers are listed for applicant's benefit.

Allowed Files & Publication	(703) 305-8322
Assignment Branch	(703) 308-9287
Certificates of Correction	(703) 305-8309
Drawing Corrections/Draftsman	(703) 305-8404/8335
Fee Increase Questions	(703) 305-5125
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Ted Kavanaugh  
Primary Examiner  
Art Unit 3728

TK  
April 2, 2003